



Physical Therapy Spotlight: Protecting Your License

Healthcare Providers Service Organization (HPSO), in collaboration with CNA, has published our *Physical Therapy Professional Liability Exposure Claim Report: 4th Edition*. It includes statistical data and case scenarios from CNA claim files, as well as risk management recommendations designed to help physical therapists and physical therapist assistants reduce their malpractice exposures and improve patient safety.

You may access the complete report, and additional Risk Control Spotlights, at: www.hpso.com/ptclaimreport

This Physical Therapy Spotlight focuses on our analysis and risk recommendations regarding one of the most significant topics in the report: Analysis of License Protection Matters with Defense Expense Payment.

A physical therapist's (PT) or physical therapist assistant's (PTA) license is their livelihood, so protecting it is paramount. The practice and conduct of every physical therapy professional are expected to be safe, competent, ethical and in compliance with applicable laws and regulations. Each State Board of Physical Therapy (SBPT) serves as the protector of the public by providing service and leadership in order to promote safe and competent physical therapy practice. The SBPT has the authority to deny an application, discipline a licensed individual, and suspend or revoke a license indefinitely.

When a complaint is asserted, physical therapy professionals must be equipped with the resources to adequately defend themselves. Being unprepared could be the difference between a PT or PTA retaining or losing one's license. This Physical Therapy Spotlight provides an overview of the role of the SBPT in the legal/regulatory system, describes the disciplinary process, and imparts helpful recommendations on defending yourself in the event that you receive a complaint summons.

The HPSO/CNA *Physical Therapy Professional Liability Exposure Claim Report: 4th Edition* revealed a total of 170 license defense matters with payment in the five-year analysis, with an average defense expense of \$6,420. Compared to the previous dataset, not only has the number of license protection matters in the 2020 dataset increased by 18.1 percent, but the average payment per license defense matter has increased by 33 percent.

The following chart represents the 2020 distribution of license protection matters with defense payments by license type. The average total payment represents solely the legal fees and other expenses involved in defending the physical therapy professional against the complaint, rather than fines, or indemnity or settlement payments to a plaintiff. The percentage of license protection matters correlates to the proportion of PTs and PTAs within the overall CNA/HPSO-insured physical therapy population.

License Protection Matters by Licensure Type

License Type	PT	PTA	Total
License protection paid matters	157	13	170
Percentage of license protection paid matters	92.4%	7.6%	100%
Total payments	\$1,008,511	\$82,951	\$1,091,462
Average payments	\$6,573	\$4,583	\$6,420

Understanding the Legal System

There are three types of law, the third of which comes into play during licensing complaints:

- Civil Law protects the rights of citizens and offers legal remedies. Civil actions typically involve a plaintiff suing to collect money to compensate for an injury. One example of a civil action is a medical malpractice lawsuit. The outcome of civil cases is determined by which party has the preponderance of evidence in its favor.
- Criminal Law involves the system of legal rules that define conduct that is classified as a crime. Examples include driving under the influence, theft or assault. Criminal cases are determined by proving guilt beyond a reasonable doubt.
- Administrative Law governs the rules and regulations promulgated and enforced by government agencies – *such as your SBPT*. Administrative cases are determined by the state providing 'clear and convincing' evidence of the allegations, although this standard may vary by state.

The Physical Therapy Practice Act

Each state has enacted laws and issued regulations that govern the conduct of licensed professionals. The law applicable to licensed physical therapy professionals is the state Physical Therapy Practice Act. All physical therapy professionals should become conversant with the PT Practice Act governing the state(s) in which they are practicing. A PT Practice Act is a statute defining the scope and practice of physical therapy within the jurisdiction, outlining licensing requirements for PTs and PTAs, and establishing penalties for violations of the law. The PT Practice Act gives your SBPT the authority to:

- Provide licensed physical therapy professionals with certain rights and responsibilities;
- Develop practice standards, policies, and administrative rules and regulations;
- Educate physical therapy professionals regarding practice;
- Credential and issue physical therapy licenses; and
- Enforce the laws pertaining to physical therapy practice by investigating reports of professional misconduct and making decisions in order to protect the public.

A PT Practice Act is a statute defining the scope and practice of physical therapy within the jurisdiction.

Licensee Rights During the Complaint and Investigation Process

Should you become the subject of a licensing complaint, the state will not provide a lawyer, or recommend a lawyer, but gives you the right to retain a lawyer. The state also entitles you the opportunity to present evidence to defend yourself during a hearing.

The Complaint and Investigation Process

Each state has its own complaint and investigation process. This document outlines a typical complaint process.

Any person who has knowledge of conduct by a licensed professional that may violate state or federal law may report the alleged violation to the appropriate state Board, such as the SBPT. Typically, complaints can either be submitted via the state Board's website or via a form found on the state Board's website.

After receipt of a signed/dated formal complaint, including a written narrative of "who, what, where, when, how, and to what extent," the Board's enforcement staff will determine if the complaint falls within the jurisdiction of the Board's authority and whether it violates the state's Code and/or the respondent's (the licensee who is the subject of the complaint) practice act.

Involvement in a disciplinary action will take time to resolve, sometimes years, which can make the entire process all the more stressful for the respondent.



Investigative Stage

If the complaint is within the jurisdiction of the Board and is allegedly in violation of the law, a member of the enforcement staff will be assigned the matter and may ask for evidence such as: documentation, physical evidence, video, medical records and/or clarification of the information already provided by the complainant. Depending upon the complexity of the complaint, the investigative process may take six months or longer to complete.

If you are contacted during the investigative stage, consult with a lawyer. You must be cooperative, but be aware that whatever you share is evidence the investigator will turn over to the Board.

Look to your legal counsel for guidance before sharing any information. Your attorney may be able to speak to the investigators, learn more about your case, and help you navigate the entire process.

License Protection vs. Professional Liability. What is the difference?

License Protection

Inquiry by the State Board, arising from a complaint.

Allegations can be directly related to a physical therapist's clinical practice and professional responsibilities, and they can be of a nonclinical nature, such as physical abuse, unprofessional behavior, or fraud.

The State Board of Physical Therapy can suspend or revoke a license. Its primary mission is to protect the public from unsafe practice.

Professional Liability

Civil lawsuit arising from a patient's malpractice claim.

Allegations are related to clinical practice and professional responsibilities.

The civil justice system cannot suspend or revoke your license to practice. Professional liability lawsuits serve to fairly compensate patients who assert that they have suffered injury or damage as the result of professional negligence.

Prosecution Phase

Once the investigation is complete, the prosecuting attorney or state agency will decide how to proceed, of which there are several options:

- When a violation cannot be substantiated following an investigation, a matter may be closed with no formal action. Matters closed without formal action are not a matter of a public record.
- When an investigation indicates that a violation appears to have occurred, the Board may seek to negotiate the discipline and other terms through a consent agreement, which must be agreed upon by the respondent and the Board. Consent agreements are a matter of a public record.
- When a violation is believed to have occurred but no consent agreement is offered or agreed upon by the respondent, the Board may file formal charges presented in a "Notice of Opportunity for Hearing." The respondent may request a public administrative hearing within thirty (30) days of the mailing of the notice.
 - If an administrative hearing is scheduled, the complainant, victim and witnesses may be subpoenaed to provide testimony in front of a hearing officer. In such a case, the Assistant Attorney General assigned to the Board assists in the preparation of witness testimony and presentation of evidence.
 - The respondent also has the right to an attorney, to call witnesses, present evidence and examine the complainant, victim and witnesses testifying on behalf of the Board.
 - The hearing officer will then produce a report to the Board on his or her recommendations regarding the matter. The Board may accept, reject, or modify the hearing officer's report and recommendation(s). The respondent is then notified of the Board's decision with regard to disciplinary action. The respondent has the right to appeal the Board's decision through the appropriate court of common pleas. Disciplinary actions resulting from administrative hearings are a matter of public record.

Physical Therapy Spotlight

For risk control strategies related to:

- [Documentation](#)
- [Home Care](#)
- [Telehealth](#)
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- [Burns \(video legal case study\)](#)

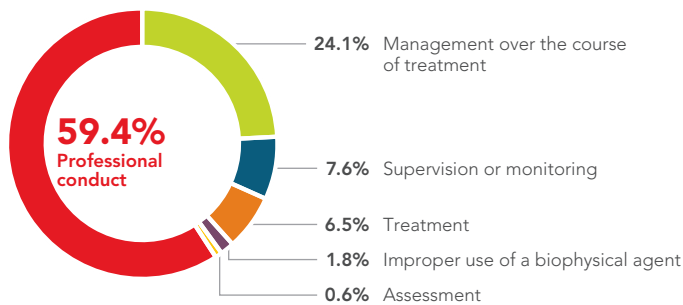
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Allegations

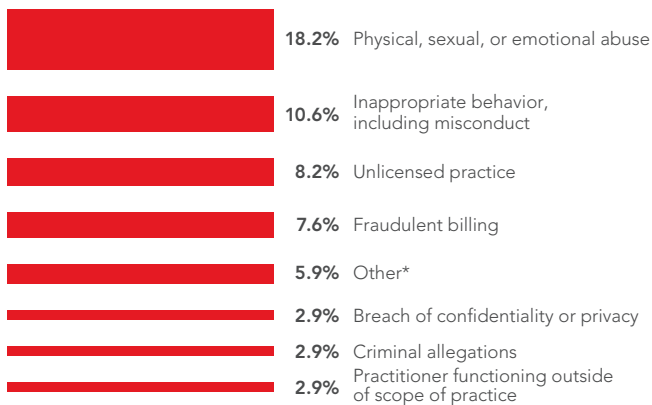
Comprising 59.4 percent of license protection matters, **professional misconduct** allegations are the most frequent category of allegations asserted against physical therapy professionals in license protection matters. Allegations of physical, sexual, or emotional abuse were the most frequent allegation in the 2020 claim report dataset, comprising 18.2 percent of all license protection matters. Other allegations commonly seen against physical therapy professionals included inappropriate behavior, including misconduct (10.6 percent of license defense matters), unlicensed practice (8.2 percent), and fraudulent billing (7.6 percent).

31 Distribution of License Defense Matters by Primary Allegation Class



32 Allegations Related to Professional Conduct

* Other allegations in the professional conduct category, which account for <2.5% of all license protection matters in the 2020 dataset, include failure to follow policies and procedures, substance abuse, reciprocal action and issues related to information provided during the license/certificate renewal process.



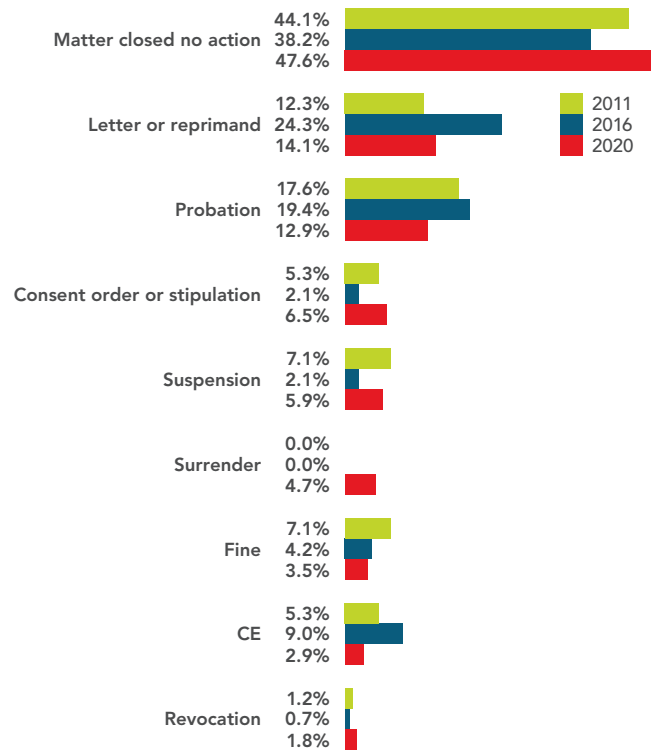
Outcomes

While the terminology used to describe the types of disciplinary actions SBPTs impose may differ between states and jurisdictions, disciplinary action taken by all SBPTs can affect a PT's or PTA's ability to practice. Any complaint filed against and potentially implicating the license/certification of a PT or PTA can have career-altering consequences, ranging from reprimands or fines to surrender or revocation of license, resulting in career termination.

Approximately 52 percent of licensing board matters led to some type of Board action against a physical therapy professional. In 14.1 percent of matters, the physical therapy professional received a letter or reprimand, which is considered a "warning." The more serious outcomes include: probation (12.9 percent of matters), suspension (5.9 percent), and revocation (1.8 percent).

Some outcomes may be combined, such as receiving a reprimand coupled with a fine. Disciplinary actions resulting from administrative hearings are a matter of public record. Public records related to discipline are available on the Board's website and via the public license look-up. Additionally, to obtain disciplinary information regarding a licensee, an individual may mail, fax, or e-mail the Board with a public records request.

34 Comparison of 2011, 2016 and 2020 Distribution of State Board of Physical Therapy Actions for PTs and PTAs



Risk Management Recommendations

Below are some proactive concepts and behaviors to include in your physical therapy practice, as well as steps to take if you believe you may be involved in a SBPT matter related to your practice:

Everyday practice

- **Practice within the requirements of your state PT practice act, in compliance with organizational policies and procedures, and within the standard of care.** If regulatory requirements and organizational scope of practice differ, comply with the most stringent of the applicable regulations or policy. If in doubt, contact your state Board or professional association for clarification.
- **Document your patient care assessments, observations, communications and actions in an objective, timely, accurate, complete, and appropriate manner. Never alter a record for any reason** or add anything to a record after the fact, unless it is necessary for the patient's care. If it is essential to add information to the record, properly label the delayed entry, but never add any documentation to a record for any reason after a complaint has been made. If additional information related to the patient's care emerges after you become aware that a complaint has been made to the SBPT, discuss the need for additional documentation with your manager, the organization's risk manager and legal counsel.
- **Maintain files that can be helpful in speaking to your character.** Keep copies of letters of recommendation, performance evaluations, thank-you letters from patients, awards, records of volunteer work and continuing education certificates.

If **regulations** and organizational **policies** differ, **comply with** whichever is **the most stringent** or **conservative**.

Once you become aware of a licensure matter:

- Immediately contact your professional liability insurance carrier if you:
 - Become aware of a filed or potential professional liability matter against you.
 - Receive a subpoena to testify in a deposition or trial.
 - Have any reason to believe that there may be a potential threat to your license to practice.
- Refrain from discussing the matter with anyone other than your defense attorney or the case professionals managing your case.
- Promptly return calls from your defense attorney and the case professionals. Contact your attorney or case professional before responding to calls, e-mail messages or requests for documents from any other party.
- Provide your insurance carrier with as much information as you can when reporting such matters, including contact information.
- Never testify in a deposition without first consulting your insurance carrier or legal counsel.
- Copy and retain all legal documents for your records, including:
 - The summons and complaint
 - The subpoena
 - Attorney letter(s)
 - Any other legal documents pertaining to the matter

License Protection Coverage

Professional liability insurance that includes coverage for license protection safeguards physical therapy professionals against licensing board complaints by:

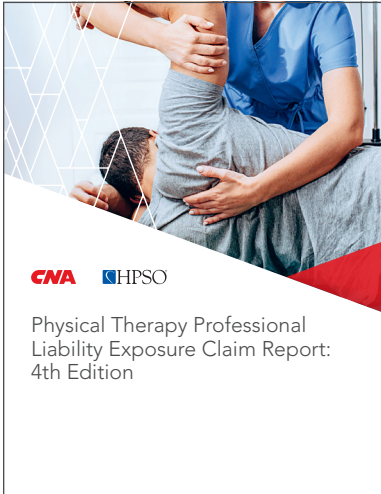


Providing personal protection for inquiries arising out of a covered incident.

Covering costs associated with a disciplinary inquiry, up to \$25,000 annual aggregate.

Covered expenses can include legal representation, lost wages and travel.

This information is designed to help physical therapy professionals evaluate risk control exposures associated with their current practice. It is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your clinical procedures and risks may be different from those addressed herein, and you may wish to modify the tool to suit your individual practice and patient needs. The information contained herein is not intended to establish any standard of care, serve as professional advice or address the circumstances of any specific entity. These statements do not constitute a risk management directive from CNA. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.



This information was excerpted
from HPSO and CNA's full report.
www.hpso.com/ptclaimreport



151 North Franklin Street
Chicago, IL 60606
1.866.262.0540
www.cna.com



1100 Virginia Drive, Suite 250
Fort Washington, PA 19034
1.800.982.9491
www.hpso.com

In addition to this publication, CNA and Healthcare Providers Service Organization (HPSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to physical therapy professionals, as well as information relating to physical therapy professionals insurance, at www.hpso.com. These publications are also available by contacting CNA at 1-866-262-0540 or at www.cna.com.

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